

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Derry Petty,

Plaintiff,

Case No. 16-cv-12061

v.

Judith E. Levy

United States District Judge

Susan E. Beebe, Friend of the
Court, Christina Arnold, and John
Does 1-10,

Mag. Judge R. Steven Whalen

Defendants.

**OPINION AND ORDER DENYING PLAINTIFF'S FEDERAL
RULES OF APPELLATE PROCEDURE RULE 4(a)(5) MOTION
FOR EXTENSION OF TIME BECAUSE HIS NOTICE OF
APPEAL WAS TIMELY FILED**

Plaintiff Derry Petty filed a *pro se* complaint and application to proceed *in forma pauperis* on June 7, 2016. (Dkt. 1; Dkt. 2.) On June 13, 2016, this Court entered an opinion and order granting the motion to proceed IFP, dismissing the case with prejudice for failure to state a claim, and denying plaintiff's request for service by the United States Marshals Service. (Dkt. 4.) Plaintiff filed his notice of appeal and

application to proceed IFP on appeal on July 14, 2016, thirty-one days after the opinion and order was entered.

Plaintiff also filed a motion for extension of time for a notice of appeal, thinking that his notice of appeal had been filed one day late. (Dkt. 7.) Plaintiff did not specifically cite to Rule 4(a)(5) of the Federal Rules of Appellate Procedure, but it is clear from the motion that Rule 4(a)(5) is the relevant rule regarding the relief he seeks.

However, this Court did not enter a separate judgment on the day it entered its order and opinion. Plaintiff's notice of appeal was thus timely filed. *See* Fed. R. App. P. 4(a)(7)(A)(ii); *Avila v. Dominguez*, 294 F. App'x 748, 750 (3d Cir. 2008) (dismissal of *pro se* complaint required separate judgment because order contained extended presentation of facts and procedural history and thus failed to satisfy Rule 58 of the Federal Rules of Civil Procedure, *i.e.*, the separate judgment rule); *Picquin-George v. Warden*, 200 F. App'x 159, 161 n.1 (3d Cir. 2006) (litigant had 150 days to file appeal because district court did not file separate document in case dismissed under 28 U.S.C. § 1915); *Craig v. Lynaugh*, 846 F.2d 11, 11-12 (5th Cir. 1988) (district court filed a memorandum order dismissing the complaint as frivolous under 28

U.S.C. § 1915(d), but “did not comply with the requirement of [Rule] 58 that every judgment be set forth on a separate document”).

Accordingly,

Plaintiff’s motion for extension of time (Dkt. 7) is DENIED, because his notice of appeal was timely filed.

IT IS SO ORDERED.

Dated: July 18, 2016
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court’s ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on July 18, 2016.

s/Felicia M. Moses
FELICIA M. MOSES
Case Manager